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*Attorneys for Plaintiff Philip Morris USA Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York  
corporation doing business as A & V MINI  
MARKET, *et al.*,

Defendants.

**REQUEST FOR CERTIFICATE OF DEFAULT**

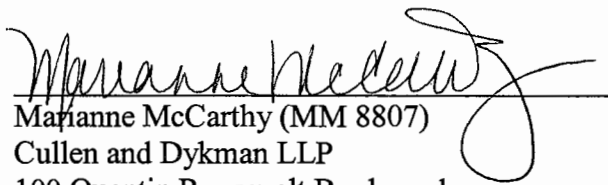
TO THE CLERK OF THE COURT:

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant Bronx #1 Discount Grocery Corp., a New York corporation doing business as NY #1 Discount Grocery ("Bronx #1 Discount Grocery"). Default should be entered because Bronx #1 Discount Grocery has not answered or responded to the Complaint within the time prescribed by

Rule 12 of the Federal Rules of Civil Procedure or otherwise appeared in this action. The facts justifying the entry of default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: January 25, 2008

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**AFFIDAVIT OF MARIANNE MCCARTHY**  
**IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT**

STATE OF NEW YORK )

)

ss.:

COUNTY OF NASSAU )

MARIANNE MCCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of

Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant Bronx #1 Discount Grocery Corp., a New York corporation doing business as NY #1 Discount Grocery ("Bronx #1 Discount Grocery"), pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, Bronx #1 Discount Grocery is not an infant, in the military, or an incompetent person.

3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on Bronx #1 Discount Grocery by serving a copy of the Summons and Complaint on Mohamed Ould, a manager and authorized agent of Bronx #1 Discount Grocery, on October 2, 2007, at the business address of 192 E. 167<sup>th</sup> Street, Bronx, New York 10456. These facts are set forth in the Affidavit of Service of Bethel Debnam, sworn to October 3, 2007, a true and correct copy of which is annexed hereto as Exhibit B.

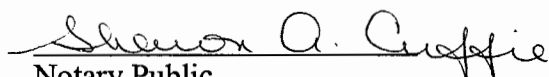
5. Under Fed. R. Civ. P. 12(a)(1)(A), Bronx #1 Discount Grocery was required to answer or respond to the Complaint no later than October 22, 2007.

6. Bronx #1 Discount Grocery has not answered the Complaint or otherwise defended the action, and the time for Bronx #1 Discount Grocery to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against Bronx #1 Discount Grocery.

  
MARIANNE MCCARTHY

Sworn to before me this  
25<sup>th</sup> day of January, 2008.

  
Notary Public

Sharon A. Cuffie  
Notary Public, State of New York  
No. 01CU6020584  
Qualified in Suffolk County  
Commission Expires March 01, 20 11

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**CLERK'S CERTIFICATE OF DEFAULT**

I, J. Michael McMahon, Clerk of the United States District Court for the Southern District of New York, do hereby certify that a copy of the Summons and Complaint in this action, filed September 26, 2007, according to the proof of service, was served upon Defendant Bronx #1 Discount Grocery Corp., a New York corporation doing business as NY #1 Discount Grocery ("Bronx #1 Discount Grocery"), in accordance with Rule 4(h)(1) of the Federal Rules of

Civil Procedure. In particular, on October 2, 2007, Mohamed Ould, a manager and authorized agent of Bronx #1 Discount Grocery, accepted service of the Summons and Complaint.

I further certify that the docket entries indicate that Bronx #1 Discount Grocery has not filed an answer or otherwise moved with respect to the Complaint.

The default by Defendant Bronx #1 Discount Grocery is hereby noted.

Dated: New York, New York

\_\_\_\_\_, 2008

J. Michael McMahon  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk